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Counsel to Magna Trust Company, Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

CIRCUIT CITY STORES, INC., *et al.*,

Debtors.

Case No. 08-35653-KRH
Chapter 11
Jointly Administered

**RESPONSE AND OPPOSITION OF MAGNA TRUST COMPANY, TRUSTEE
TO LIQUIDATING TRUST'S FORTY-FIRST OMNIBUS
OBJECTION TO LANDLORD CLAIMS
(REDUCTION OF CERTAIN INVALID CLAIMS-MITIGATION)**

Magna Trust Company, Trustee ("Magna"), by counsel, having filed a proof of claim identified and included in the above captioned *Liquidating Trust's Forty-First Omnibus Objection to Landlord Claims* (Reduction of Certain Invalid Claims-Mitigation) (the "Objection") filed by Alfred H. Siegel (the "Trustee"), the duly appointed trustee of the Circuit City Stores, Inc., Liquidating Trust (the "Trust"), does hereby oppose the Objection and for its response, states as follow:

1. Circuit City Stores, Inc. and certain of its affiliated entities (collectively, "Debtors") filed a petition for relief on or about November 10, 2008 ("Petition Date"). After the Petition Date, the Debtors continued to be in possession and operation of their businesses.

2. Pursuant to that *Notice of Rejection of Unexpired Leases and Abandonment of Personal Property* [Docket No. 2419], the Debtors rejected that certain Lease Agreement dated March 8, 1995, by and between Magna and the Debtor (the “Lease”) for the premises located at 3051 West Wabash Avenue, Springfield, Illinois (the “Premises”). The Lease was rejected effective March 11, 2009.

3. On or about April 28, 2009, Magna filed proof of claim number 12673 (the “Claim”), setting forth a general unsecured claim in the amount of \$454,547.51 representing prepetition sums due under the Lease in the amount of \$103,361.52, as well as rejection damages in the amount of \$351,185.99 (the “Rejection Damages”). The Rejection Damages were calculated as 15% of the remaining term of the Lease or through November 2009, pursuant to 11 U.S.C. § 502(b)(6). A partial copy of the Claim is attached as **Exhibit A**.

4. The Objection seeks to reduce the Claim on the basis that Magna may or may not have engaged in sufficient efforts to mitigate its Rejection Damages. Specifically, the Objection seeks to reduce the Claim from \$454,547.51 to \$103,361.52.

5. The apparent premise for the reduction is the avoidance of all Rejection Damages incurred by Magna under 11 U.S.C. § 502(b)(6) or all the Rejection Damages incurred under the Lease.

6. Magna did engage in substantial mitigation efforts, including, the engagement of a broker to market and rent the Premises. In addition, in attempt to attract a larger group of potential tenants, Magna subdivided the Premises into smaller units at great expense. Despite such efforts, Magna was not able to locate a suitable tenant until November of 2011, at which time only a portion of the Premises were rented.

7. Given that the replacement tenant rented a portion of Premises after November 2009, the time period which comprises the Rejection Damages, Magna remains entitled to the full amount of Rejection Damages set forth in the Claim.

8. For additional information regarding the mitigation efforts of Magna, the Liquidating Trustee may contact:

Emily B. Cour, Esq.
c/o Jeremy S. Williams, Esq.
Kutak Rock LLP
1111 East Main Street, Suite 800
Richmond, Virginia 23219

Additional contact information for Magna is available upon request.

9. Based on the above, the Objection should be denied.

WHEREFORE, Magna respectfully request that this Court deny the relief requested in the Objection as it relates to the Claim; deem the Claim allowed; and grant such other and further relief as is just and proper.

Dated: June 26, 2012
Richmond, Virginia

Respectfully submitted,

/s/ Jeremy S. Williams

KUTAK ROCK LLP

Loc Pfeiffer (VSB 39632)

Peter J. Barrett (VSB 46179)

Jeremy S. Williams (VSB 77469)

Bank of America Center

1111 East Main Street, Suite 800

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Telephone: (804) 644-1700

Counsel to Magna Trust Company, Trustee

CERTIFICATE OF SERVICE

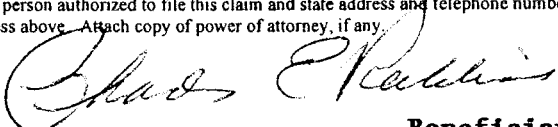
I hereby certify under penalty of perjury that on June 26, 2012, a true and exact copy of the foregoing was served via ECF notification to the following:

Jeffrey N. Pomerantz, Esq.
Andrew W. Caine, Esq.
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Boulevard
Los Angeles, CA 90067-4100

Lynn L. Tavenner, Esq.
Paula S. Beran, Esq.
Tavenner & Beran, PLC
20 North Eighth Street, 2nd Floor
Richmond, VA 23219

/s/ Jeremy S. Williams
Counsel

B 10 (Official Form 10) (12/07)

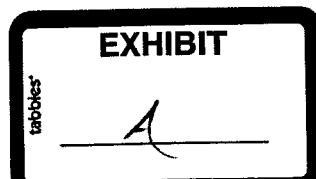
UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF VIRGINIA		PROOF OF CLAIM
Debtor against which claim is asserted: (Check only <u>one</u> box below:)		
<input checked="" type="checkbox"/> Circuit City Stores, Inc. (Case No. 08-35653) <input type="checkbox"/> CC Distribution Company of Virginia, Inc. (Case No. 08-35659) <input type="checkbox"/> Abbott Advertising, Inc. (Case No. 08-35665)		
<input type="checkbox"/> Circuit City Stores West Coast, Inc. (Case No. 08-35654) <input type="checkbox"/> Circuit City Stores PR, LLC (Case No. 08-35660) <input type="checkbox"/> Mayland MN, LLC (Case No. 08-35666)		
<input type="checkbox"/> InterTAN, Inc. (Case No. 08-35655) <input type="checkbox"/> Circuit City Properties, LLC (Case No. 08-35661) <input type="checkbox"/> Patapsco Designs, Inc. (Case No. 08-35667)		
<input type="checkbox"/> Ventoux International, Inc. (Case No. 08-35656) <input type="checkbox"/> Orbyx Electronics, LLC (Case No. 08-35662) <input type="checkbox"/> Sky Venture Corporation (Case No. 08-35668)		
<input type="checkbox"/> Circuit City Purchasing Company, LLC (Case No. 08-35657) <input type="checkbox"/> Kinzer Technology, LLC (Case No. 08-35663) <input type="checkbox"/> XStuff, LLC (Case No. 08-35669)		
<input type="checkbox"/> CC Aviation, LLC (Case No. 08-35658) <input type="checkbox"/> Courchevel, LLC (Case No. 08-35664) <input type="checkbox"/> PRAHS, INC. (Case No. 08-35670)		
NOTE: This form should not be used to make a claim for administrative expenses arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503(a).		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Magna Trust Company, Trustee		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: Magna Trust Company, Trustee c/o Circuit City Partnership 2144 S. Macarthur Blvd. Springfield, IL 62704		Court Claim Number: _____ (If known) Filed on: _____
Telephone number: (217) 525-2112		
Name and address where payment should be sent (if different from above): Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$513,749.97 If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtors business, whichever is earlier — 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan — 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use — 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units — 11 U.S.C. § 507(a)(8). <input checked="" type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(2).
2. Basis for Claim: rejection of unexpired lease (See instruction #2 on reverse side.)		Amount entitled to priority: \$59,202.46
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate: % _____ Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: 4/28/09 Signature: the person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  Beneficiary		FOR COURT USE ONLY RECEIVED APR 28 2009 KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



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1 Date Stamped Copy Returned
2 No self addressed stamped envelope
3 No copy to return





SORLING
NORTHROP, HANNA,
CULLEN & COCHRAN, LTD.
ATTORNEYS AT LAW

April 28, 2009

Via Federal Express: 888-830-4650

Circuit City Claims Processing
c/o Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, CA 90245

Re: Circuit City - Proof of Claim

Gentlemen:

Please find enclosed the Proof of Claim for damages following rejection of the unexpired lease between Magna Trust Company, Trustee and Circuit City Stores, Inc. I have enclosed one originally executed Proof of Claim as well as one copy. Please return the copy to me as proof of receipt in the enclosed self-addressed, stamped envelope.

If you have any questions regarding the enclosed please feel free to contact me.

Sincerely,

Emily B. Cour

EBC:bjb
Enclosures

REPLY TO:

607 East Adams Street
Suite 800
P.O. Box 5131
Springfield, IL 62705

P: 217-544-1144
F: 217-522-3173

401 S.W. Water Street
Suite 301
Peoria, IL 61602

P: 309-674-1144
F: 309-671-4368

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James M. Morphey
Stephen J. Bochenek
David A. Rolf
Peggy J. Ryan
Mark K. Cullen
Thomas H. Wilson
Todd M. Turner
R. Lee Allen
James D. Broadway
E. Zachary Dinardo
James G. Fahey
Michael G. Horstman Jr.
Stephen F. Hedinger
Lisa Harms Hartzler
John R. Simpson
Elizabeth A. Urbance
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Lisa A. Petrilli
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Of Counsel:
William S. Hanley
William B. Bates
Mark H. Ferguson

Retired:
Philip E. Hanna
Patrick V. Reilly

Sorling, Catron and Hardin
1944-1975

NAME OF CREDITOR: Magna Trust Company is now Regions Bank.

2. BASIS FOR CLAIM:

This claim is filed for damages arising from the rejection of the lease between Circuit City Stores, Inc. and Magna Trust Company, Trustee ("Landlord"), under Trust Agreement dated January 26, 1995 and known as Trust No. 01-90-0182-00 ("Lease") (attached hereto). Pursuant to the Lease, Circuit City Stores, Inc., as Tenant, was obligated to pay in equal monthly installments Base Rent plus Additional Rent totaling Forty Thousand Six Hundred Twenty-Two and 26/100 (\$40,622.26) per month. The Lease was rejected by Tenant on March 11, 2009. Specifically, the damages arising from rejection of the Lease, as well as damages which remain outstanding, are as follows:

I. Organized By Specific Type of Damage:

a) Rent Damages:

(1) November 1 through November 10, 2008	\$ 13,540.75
(3) November 11 through November 30, 2008	27,081.51
(4) March 12 through March 31, 2009	26,207.91
(5) April 2009 through November 2009	<u>324,978.08</u>

TOTAL RENT DAMAGES: \$ 391,808.25

b) CAM & Insurance Damages:

(1) January 1, 2008 through November 10, 2008	\$ 10,163.86
(2) November 11, 2008 through December 31, 2008	1,683.19
(3) January 1, 2009 through March 11, 2009 (based on CAM & Insurance for 2008)	<u>2,272.04</u>

TOTAL CAM & INSURANCE: \$ 14,119.09

c) Real Estate Tax Damages:

(1) January 1, 2008 through November 10, 2008	\$ 72,378.34
(2) November 11, 2008 through December 31, 2008	11,986.22
(3) January 1, 2009 through March 11, 2009 (based on real estate taxes for 2008)	<u>16,179.50</u>

TOTAL REAL ESTATE TAX: \$ 100,544.06

d) Other Damages:

(1) Balance Forward on Account:	\$ 7,278.57
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TOTAL OTHER DAMAGES: \$ 7,278.57

TOTAL DAMAGES: \$ 513,749.97

II. Damages Organized by Pre-Petition, Administrative and Following Rejection

a) Pre-Petition Damages:

(1) Rent: November 1 through November 10, 2008	\$ 13,540.75
(2) CAM & Insurance: Jan. 1 through Nov. 10, 2008	10,163.86
(3) Real Estate Taxes: January 1 through Nov, 10, 2008	72,378.34
(4) Balance forward on Account	<u>7,278.57</u>

TOTAL PRE-PETITION DAMAGES: \$103,361.52

b) Administrative Damages/Claims:

(1) Rent: November 11 through November 30, 2008	\$ 27,081.51
(2) CAM & Insurance: Nov. 11 through Dec. 31, 2008	1,683.19
(3) CAM & Insurance: Jan. 1 through March 11, 2009	2,272.04
(4) Real Estate Taxes: Nov. 11 through December 31, 2008	11,986.22
(5) Real Estate Taxes: January 1 through March 11, 2009	<u>16,179.50</u>

TOTAL ADMINISTRATIVE DAMAGES: \$ 59,202.46

c) Lease Rejection Damages:

(1) Rent: March 12 through March 31, 2009	\$ 26,207.91
(2) Rent: April 2009 through November 2009	<u>324,978.08</u>

TOTAL LEASE REJECTION DAMAGES: \$351,185.99

TOTAL DAMAGES: \$513,749.97

5. AMOUNT OF CLAIM ENTITLED TO PRIORITY

Landlord has a claim for administrative expenses pursuant to 11 U.S.C. §503(b)(1) for the following: Post-petition administrative rent from November 11, 2008 through November 30, 2008 ("Stub Rent"), CAM & Insurance expenses from November 11, 2008 through March 11, 2009, and Real Estate Taxes from November 11, 2008 through March 11, 2009. Together, these administrative expenses total Fifty-Nine Thousand Two Hundred Two Dollars and Forty-Six Cents (\$59,202.46). Administrative claims under 11 U.S.C. § 503(b)(1) are entitled to priority status according to 11 U.S.C. § 507(a)(2) and should be paid immediately.

7. DOCUMENTS:

See the following attached documents that support the claim:

- a) Lease between Circuit City Stores, Inc. and Magna Trust Company, Trustee, dated March 8, 1995 (Exhibit A)
- b) Circuit City Partnership Customer Balance Detail as of April 1, 2009 (Exhibit B)
- c) 2008 Insurance Statement (Exhibit C)
- d) 2008 CAM Statement (Exhibit D)
- e) Circuit City Partnership Transaction Detail by Account, January – December 2008 (Exhibit E)
- f) Real Estate Tax Assessment Details for 2008 taxes payable in 2009 (Exhibit F)